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HILL ENERGY BRIEFING: Senate Adopts Budget With Climate Amendments

Kellie Lunney, Stephen Lee, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/hill-energy-briefing-senate-adopts-budget-with-climate-amendments?context=search&index=7>

Senate Democrats took a major step toward the biggest expansion in decades of federal efforts to reduce poverty, care for the elderly and protect the environment, adopting a \$3.5 trillion budget framework.

The party-line 50-49 vote provides early this morning a path for enactment of a long list of cherished Democratic priorities -- if the party's fractious progressives and moderates can agree among themselves in the coming months, Mike Dornier, Laura Davison and Steven T. Dennis report.

BGOV Bill Summary: S. Con. Res. 14, FY22 Budget Resolution

Democrats and Republicans yesterday by a vote of 99-0 supported a Republican amendment from Sen. John Barrasso (R-Wyo.) to the budget resolution that would oppose enactment of the Green New Deal, progressives' blueprint for addressing climate change. The measure wouldn't have any effect in the resolution, other than to effectively put senators on the record for a potentially tricky vote.

"As a supporter of the Green New Deal, I have no problem voting for this amendment because it has nothing to do with the Green New Deal," said Senate Budget Chairman Bernie Sanders (D-Vt.) in remarks before the vote.

"Senate Democrats are running from the Green New Deal," Barrasso said in a statement after the vote. "The entire Senate has now rejected these failed ideas."

Sen. Ed Markey (D-Mass.), co-author of the Green New Deal with Rep. Alexandria Ocasio-Cortez (D-N.Y.), voted for the Barrasso amendment as well. He has said that the Green New Deal is in "the DNA" of the budget resolution. Markey and several Democrats released a statement condemning the "cynical, sham" vote. "This amendment is a tired and failed Republican attempt to throw speed bumps on the road to climate action," the lawmakers said.

Senators also approved 51-48 an amendment from Environment and Public Works Chairman Tom Carper (D-Del.) that would establish a deficit-neutral reserve fund related to addressing climate change.

Other notable energy-related amendments voted on yesterday included:

A measure from Sen. Kevin Cramer (R-N.D.) to prohibit the Biden administration from releasing rules or guidance to ban fracking, which was approved by a 57-42 vote. Read more from Laura Davison.

A measure limiting who can get a tax break for buying an electric car or truck and which vehicles qualify, which was approved by a 51-48 vote. Republican Senator Deb Fischer of Nebraska proposed prohibiting people making more than \$100,000 a year from claiming EV tax credits and to end tax credits for EVs that cost more than \$40,000—levels that would exclude many of the electric vehicles on the market or planned to come to the market in the next few years. Read

more from Stephen Dennis, Sophia Cai, Jennifer Dlouhy and Ari Natter.

An amendment supporting carbon capture technology, offered by Sen. Shelley Moore Capito (R-W.Va.), was adopted. Senators adopted an amendment offered by Sen. John Boozman (R-Ark.) opposing policies to make fossil fuel-burning power plants ineligible for Department of Agriculture-backed financing.

They also approved a measure from Sen. Joni Ernst (R-Iowa) opposing new Clean Air Act restrictions on farmers and ranchers, and opposing the imposition of new methane standards on livestock.

Sen. Dan Sullivan's (R-Alaska) amendment supporting a prohibition on renewable energy projects getting federal funds to purchase materials produced in China was approved.

A measure was adopted to support "baseload power resources" including coal and natural gas with carbon capture technology, as offered by Sen. John Hoeven (R-N.D.).

A measure from Sen. Cynthia Lummis (R-Wyo.) was rejected by a 49-50 vote. It would have incorporated her legislation (the POWER Act) prohibiting the administration from blocking new energy or mineral leasing and permitting on federal lands and waters without congressional approval.

House Schedule Change: The House plans to return on Aug. 23 now that the Senate completed its work on the budget resolution, weeks...

EPA Asked to Stop Barring Employees From Sharing Scientific Findings With Each Other

Eric Katz, Government Executive

<https://www.govexec.com/management/2021/08/epa-asked-stop-barring-employees-sharing-scientific-findings-each-other/184413/>

A group is asking the Environmental Protection Agency to scrap a directive that prohibits some scientists from discussing their work amongst themselves, saying the current system prevents workers from properly protecting the public from potentially hazardous materials.

Managers at EPA began instituting the policy in early 2020, according to Public Employees for Environmental Responsibility, which wrote to the agency asking for its revocation. The ban affects the New Chemicals Division in EPA's Office of Chemical Safety and Pollution Prevention, which conducts reviews of new materials before they are cleared for use in commercial products as required by the Toxic Substances Control Act.

The office is understaffed and lacking expertise, PEER said, increasing the need for scientists to be able to lean on each other and review their colleagues' work. Where knowledge gaps or inexperience exist, consultation with others in the office can ensure sound assessments before new chemicals are approved. Tim Whitehouse, PEER's executive director, said his organization represents EPA employees who have been reprimanded for "reaching out to other employees for feedback on their work."

The policy "requires staff to needlessly duplicate work, which wastes staff time and taxpayer dollars," Whitehouse said in a letter to Michal Freedhoff, EPA's assistant administrator for chemical safety and pollution prevention. He added it fails to ensure that the employees' work is "sufficiently protective of human health and the environment." Making matters worse, he said, EPA has assigned the least experienced employees to the most complicated cases.

Jacob Carter, the senior scientist at the Union of Concerned Scientists, said such a policy would be very odd and difficult to justify. He called it "extremely important" for scientists to engage their colleagues about their work to review for potential red flags, mistakes or misinterpretation of data.

"It's pretty standard scientific process," Carter said.

Tim Carroll, an EPA spokesman, denied that EPA had any official policy within the chemical safety office that prohibited internal sharing of information.

"This administration is committed to ensuring that science is the backbone of everything we do as an agency," Carroll said. "That includes a steadfast commitment to fostering a culture that promotes an open exchange and collaboration amongst all employees and includes coordinating with their management chain as appropriate so supervisors are aware of what staff are working on."

Whitehouse pushed back on the denial, saying mid-level managers within the office created and are still enforcing a de facto policy.

"That is why we are calling on EPA to issue an affirmative policy statement allowing scientists within [the office] to consult with one another on hazards and risk assessments and to set clear public guidelines for when and how this consultation should occur," Whitehouse said. "It has become clear that many mid-level managers are stovepiping scientists to limit scientific inquiry and help these managers rush new chemicals onto the market without an adequate review of their safety."

The complaints come just a month after employees in the chemical safety office blew the whistle on alleged interference by management to ensure the approval of certain substances. Employees said their reports were altered and they faced pressure to certify that some chemicals posed no risk to the public.

They also follow a push by the Biden administration to reverse policies instituted during the Trump administration that interfered with the work of career scientists across government. Biden signed an executive order shortly after taking office to improve agencies' scientific integrity policies and expose any malfeasance that occurred in the previous administration.

"Improper political interference in the scientific process, with the work of scientists, and in the communication of scientific facts...

McEachin Seeks To Boost EJ Infrastructure Funds But Eyes Future Congress

Jeremy Bernstein, Inside EPA

<https://insideepa.com/daily-news/mceachin-seeks-boost-ej-infrastructure-funds-eyes-future-congress>

Rep. Don McEachin (D-VA), a leader of House efforts to bolster EPA funding and policies to address environmental justice (EJ), is planning to target Senate-approved infrastructure measures when they come to the lower chamber, charging they do not go far enough in addressing his EJ priorities.

The just-approved bipartisan infrastructure bill, which cleared the Senate in a 69-30 vote Aug. 10, is a "starting point," he says. "The [funding] numbers are a little light," he told Inside EPA in an Aug. 10 interview. "They can't meet the moment, but it is a starting point," he said.

McEachin also says he was disappointed with the outline of Senate Democrats' budget resolution, which the upper chamber is poised to begin voting on in the coming days to unlock a streamlined legislative process that will allow Democrats to approve additional infrastructure funds without GOP support.

According to an Aug. 9 memo from Senate Majority Leader Chuck Schumer (D-NY), the \$3.5 trillion budget resolution provides \$67 billion to the environment committee to address several issues, including development of a Clean Energy Technology Accelerator that is commonly referred to as a "green bank"; various "environmental justice investments for clean water affordability and access, healthy ports, and climate equity"; EPA climate and research programs; federal investments in energy-efficient buildings; economic development programs; clean vehicle investments; and a "methane polluter fee" to cut greenhouse gases.

McEachin says he was surprised at how small the environment committee's allocation is, noting his surprise reflects his concern. But, he says, "we will have something to say in the House."

The congressman, who is the lead sponsor of several bills to bolster federal EJ policies, says he plans to prioritize increasing funds for removing lead service lines and lead-based paint, Superfund cleanups, clean air and research and development for low-carbon technologies.

His pledge comes as he and other Democrats have been promising to use the reconciliation process to bolster the bipartisan bill's environmental provisions.

"While environmental justice and ensuring equitable economic opportunity remain key priorities for the Biden Administration and for the Democratic Caucus, investments in environmental justice related programs included in the Bipartisan Infrastructure Framework fall far short of what is necessary to fully mitigate the impacts of environmental racism and environmental inequity on our communities and ensure that they are not left behind as we look to build a sustainable economy," McEachin and several other House Democrats wrote in an Aug 5 letter to congressional leaders.

"As Congress moves to make historic investments to ensure that our economy remains strong, we urge you to prioritize the needs of environmental justice communities," they added.

Three Democratic senators who are members of the upper chamber's EJ caucus delivered a similar message in an Aug. 4 statement. "As the Senate prepares to consider reconciliation legislation to improve the lives of the American people, it is imperative that our investments directly benefit underserved communities. That is why we urge Senate leadership and the White House to support strong funding and resources to clean up legacy pollution and truly advance environmental justice in the upcoming reconciliation bill," Sens. Tom Carper (D-DE), chairman of the environment committee, Cory Booker (D-NJ) and Tammy Duckworth (D-IL) said in the statement.

"We must seize this opportunity to right the wrongs of our past and invest in a brighter future for all Americans," they added.

McEachin's Priorities

But their prospects for doing so appear limited, given the relatively small sum allocated to the environment committee in the Senate budget resolution.

For example, the bipartisan infrastructure bill provides \$15 billion for replacing lead service lines, a level much smaller than the \$45 billion...

EPA: Eastman Chemical reduced emissions of pollutant by 75% over 6 years, reduced public health risk

Courtney Stern, Longview News-Journal

https://www.news-journal.com/news/local/epa-eastman-chemical-reduced-emissions-of-pollutant-by-75-over-6-years-reduced-public-health/article_73d5ea38-fa10-11eb-b587-cba724af589c.html

Eastman Chemical Co.'s reduction of the emission of a harmful pollutant during the past six years has also led to decreased public health risk, according to the Environmental Protection Agency.

The EPA held a virtual community meeting Tuesday evening regarding Eastman Chemical's ethylene oxide (EtO) emissions and its health effects.

According to the CDC, ethylene oxide is a flammable gas that can be harmful to those exposed. Exposure to ethylene oxide may cause headache, nausea, vomiting, diarrhea, breathing difficulty, drowsiness, weakness, exhaustion, reproductive as well as eye and skin burns.

Supervisor for the EPA in the Dallas Texas area Fran Verhalen said ethylene oxide is a component of many household

products

Ethylene oxide is used in clothing, detergent, personal protective equipment and more.

Many medical devices are sterilized using ethylene oxide.

Eastman both makes and uses ethylene oxide.

EPA's National Air Toxics Assessment (NATA) released in 2018, identified a number of areas across the nation with potentially elevated risk from continuous exposure to EtO in the outdoor air. Addressing EtO emissions remains a major priority for the EPA, according to the agency. In Oct. 2020, EPA Region 6 requested assistance from the State of Texas in gathering the most current information on ethylene oxide emitting facilities and assistance with technical assessments, including Eastman Chemical.

"From 2014-2020, through emission reductions and/or re-evaluation of actual emission levels, reported EtO annual emissions at the Eastman facility were reduced approximately 75 percent," the technical assessment report released in July said.

The reduction in emissions has resulted in a reduction of public health risk.

"Based on 2018 emission inventory data, EPA is updating the estimated inhalation public health risk from ethylene oxide in the community near Eastman," the report said. "The revised increased cancer risk number based on 2018 emission data is 300 in 1 million."

The model used to assess risk shows a geographic extent of about a 30 mile radius.

"The risk can be over that entire area but when we work through the model, we determine which census tracts will have the highest risk," Vehalen said. Areas closer to Eastman are most at risk, within a 1 to 1.5 mile radius.

"I use the term Potential cancer risk because each of us is unique in our reaction to cancer causing agents," Vehalen said.

This is a 78% decrease from the 2014 risk assessment of 1,355 in a million.

"Preliminary 2020 annual EtO emissions are about half of the 2018 EtO emissions assessed by EPA," the report said.

EPA uses a general 100 in 1 million, more simply 1 in 10,000, increased risk of cancer as a guideline for further investigation.

"It assumes a continuous, 24 hours per day inhalation exposure to hazardous pollutants, including EtO, for a lifetime of 70 years," the report said.

A risk of 100 in 1 million or more is what requires additional research and is not deemed acceptable by EPA. It is also measured as chronic or lifetime exposure.

"One time, short-term exposure to low amounts of ethylene oxide should not cause immediate harm to a person's health," Verhalen said.

Long term exposure to ethylene oxide increases the estimated risk of possibly developing certain cancers such as leukemia, lymphoma and breast cancer.

According to the technical assessment, the changes EtO emission estimates at Eastman are the result of refinements to the engineering estimates of the emissions and are not due to physical or operational changes at the facility.

"We are appreciative of your cooperation and activities to voluntarily reduce and/or more accurately report emissions of ethylene oxide from your facility," EPA Acting Regional Administrator David W. Gray said in a July letter to Eastman regarding the release of the technical assessment. "We continue to encourage actions to further reduce and control emissions of ethylene oxide from your facility."

US bill would ban phthalates in food contact materials

Julia John, Chemical Watch

<https://chemicalwatch.com/314495/us-bill-would-ban-phthalates-in-food-contact-materials>

US lawmakers are considering a bill to prohibit ortho-phthalates in food contact articles and investigate whether the compounds' other applications could contribute to exposure and associated health issues.

Senators Dianne Feinstein (D-California) and Kirsten Gillibrand (D-New York) introduced the Preventing Harmful Exposure to Phthalates Act on 6 August, amid concern over the substance class's endocrine effects. Manufacturers utilise phthalates in many plastic goods for food production – such as gloves, tubing, lid gaskets, conveyor belts and food packaging – but they can migrate into food and may pose reproductive and developmental problems.

If the proposal clears Congress and is signed into law, a prohibition on such uses would take effect in two years. The US Food and Drug Administration (FDA) would also be required to evaluate replacement additives for potential negative impacts on susceptible or highly exposed populations.

The agency would have one year to conduct and publish an exposure study on phthalates in other applications it regulates, such as cosmetics.

"While the harm from phthalates is well-documented, it's almost impossible for families to avoid exposure," said Ms Feinstein, who previously helped write the 2008 Consumer Product Safety Improvement Act (CPSIA), which limited these compounds in children's goods. "The fact that exposure to these toxic chemicals may come from multiple sources we come in contact with daily, including the very food we eat, should make banning them from US products a national imperative."

Ms Gillibrand added that the measure would enhance knowledge of the scope and results of exposure, partly through showing whether people of colour are disproportionately affected.

California Democrats Ted Lieu and Katie Porter will sponsor the legislation in the House of Representatives.

The American Academy of Pediatrics (AAP), American College of Obstetricians and Gynecologists (ACOG), Breast Cancer Prevention Partners (BCPP), Earthjustice, Endocrine Society, Environmental Working Group (EWG), Healthy Babies Bright Futures (HBBF) and Project TENDR all back the measure.

However, according to Eileen Conneely, the American Chemistry Council (ACC)'s senior director, the bill should be "based on information that is accurate and provides tangible health benefits to the consumer".

High-molecular-weight phthalates like diisononyl phthalate (DINP) and diisodecyl phthalate (DIDP) are allowed in food packaging across the world, including Europe, because of "overwhelming evidence of safety", she told Chemical Watch.

The proposal comes even as the FDA considers a pair of petitions on phthalates' use in food contact materials.

And focus on the compounds continues worldwide.

Last month scientists called for a binding global plastics treaty to go phthalate-free.

Project TENDR restated requests to the EPA to account for cumulative risks when assessing seven phthalates under TSCA. And US lawmakers introduced legislation to periodically review the substances' food applications and restrict their use in personal care items.

Lawsuits challenging TSCA evaluations of 1,4-dioxane, HBCD on hold

Terry Hyland, Chemical Watch

<https://chemicalwatch.com/315049/lawsuits-challenging-tsca-evaluations-of-14-dioxane-hbcd-on-hold>

Three of the four cases challenging how the US EPA conducted its initial TSCA risk evaluations are now on hold, delaying for months – or years – any potential court resolution over how the agency conducts its existing chemicals programme.

The US Court of Appeals for the Ninth Circuit on 10 August granted the EPA's request to let the agency reconsider its findings of no unreasonable risk for certain applications of 1,4-dioxane and the cyclic aliphatic bromide cluster (HBCD). The same court in July granted a similar motion involving the EPA's evaluation of methylene chloride.

The decisions give the EPA the green light to proceed with its plans to review and possibly expand its assessments of the three chemicals, and avoid litigating the evaluations while it revisits them. However, the EPA will have to provide the appeals court with regular updates on its progress reassessing the chemical evaluations.

Rules delayed

NGOs have generally welcomed the EPA's plans to reexamine its first ten risk evaluations, including for 1,4-dioxane, HBCD and methylene chloride. But they have cautioned that the agency's timelines for reviewing the evaluations and implementing risk management rules could leave workers, communities and the environment at risk for years to come.

The EPA has said revising its risk evaluation of methylene chloride, for example, could extend into August 2022, potentially pushing a risk management rule for the solvent into the middle of 2023 or later. Regarding 1,4-dioxane, the agency has said it cannot "meaningfully" begin to move ahead with the rulemaking process to regulate the solvent until late 2022 when it expects it will be close to completing its reassessment of the risk evaluation.

"The longer those rules are delayed, the more people are left in harm's way", said Jonathan Kalmuss-Katz, a senior attorney with Earthjustice who is representing many of the petitioners.

The longer timeframe also could mean there may be several more years before courts weigh in – and set binding precedent – on several key debates over how the EPA has implemented TSCA.

Asbestos litigation

While the cases challenging the evaluations of methylene chloride, 1,4-dioxane and HBCD are on hold, a group of anti-asbestos NGOs is hopeful a resolution can be reached in a separate case challenging the EPA's 'part 1' risk evaluation of chrysotile asbestos.

The Ninth Circuit in June extended filing deadlines in the asbestos case, after the parties said the extra time would allow them to complete "positive settlement discussions".

Many of the same groups recently settled a case with the EPA seeking expanded asbestos reporting.

The cases are Environmental Defense Fund, et al v US EPA; Alaska Community Action on Toxics, et al v US EPA, et al; and Asbestos Disease Awareness Organization, et al v US EPA.

Industry awaits US EPA's next steps as pause on PIP 3:1 enforcement nears end

Terry Hyland, Chemical Watch

<https://chemicalwatch.com/314502/industry-awaits-us-epas-next-steps-as-pause-on-pip-31-enforcement-nears-end>

Several industry groups and attorneys have expressed confidence that the US EPA will extend compliance dates for TSCA prohibitions on phenol, isopropylated phosphate (3:1) (PIP (3:1)) before a pause on enforcement is set to expire early next month.

But how long companies may have to phase out the widely used substance remains uncertain.

The EPA has offered few details on its plans since it issued a no action assurance (NAA) in March, saying it would wait until 4 September to enforce a broad new ban on the processing and distribution of PIP (3:1) and articles containing it. At the time, the agency invited comments on whether and how it should amend final rules issued late in 2020 restricting PIP (3:1) and four other persistent, bioaccumulative and toxic (PBT) substances: decaBDE, PCTP, HCBd and 2,4,6-TTBP.

In June, the EPA signalled it would release an "interim final rule" in September to address the five PBT rules. This could see the agency address compliance dates and bring in alternative or amended requirements, following its review of public comment submissions.

That was not enough for at least one prominent company, which announced in July it would stop sales of a popular product that contained small amounts of PIP (3:1). Many other entities, however, are confident that the EPA has heard and understands that more time, and potentially several years, are needed to comply.

"In general, we do expect EPA to provide relief to the regulated community in the form of an extension of compliance deadlines," said Philip Squair, vice president of government relations for the National Electrical Manufacturers Association (Nema). If that does not happen, Mr Squair said, "Nema may consider reactivating its joint-association lawsuit" challenging the rule.

The EPA said it "is reviewing the feedback received during the public comment period and will keep stakeholders updated as next steps are determined".

'Legally appropriate'

Lynn Bergeson, a partner with Bergeson & Campbell who advises companies and trade associations on TSCA compliance, said the agency is aware of and sensitive to "the logistical, commercial and supply chain consequences" if the deadlines for PIP (3:1) are not extended. "It seems logical and legally appropriate" for the EPA to provide deferred compliance dates for commercial entities that were less aware of the rules, she said.

Many entities failed to appreciate the ubiquity of PIP (3:1), Ms Bergeson said. The plasticiser and flame retardant is often used in electronic wiring, and also is commonly used as an anti-wear or anti-compressibility additive in hydraulic fluid, sealants and adhesives.

Erik Baptist, a partner with Wiley Rein who advises industry groups, agreed. "You never want to have an adverse impact on the public and consumers," he said. That is what you would have if the EPA were to take a hard line and fail to provide additional time for certain sectors to comply, he said.

The US Chamber of Commerce, for example, called for an industry-wide, five-year implementation delay on the PIP (3:1) ban, alongside additional exemptions and extensions.

More restrictions?

Alongside compliance extensions, however, Mr Baptist said companies should expect new restrictions as well. The EPA is likely to respond "favourably" to calls from several NGOs, states and academic experts to tighten the PBT rules, he said.

That could include changes for sectors that originally received exemptions under them.

The rule governing decaBDE is one to watch for potential changes, he said. The final rule included delayed compliance dates and exclusions for several sectors, and environmental advocates quickly challenged it in court.

EPA, Environmentalists Eye Settlement In TSCA PMN Transparency' Suit

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsca-news/epa-environmentalists-eye-settlement-tsca-pmn-transparency-suit>

EPA and environmentalists say they may be able to settle “some or all” of plaintiffs’ claims that the agency failed to provide “transparency” in its pre-market review of new chemicals required under TSCA section 5, a significant change from the Trump administration when the parties said they would not be able to strike a deal.

In an Aug. 6 joint case update in Environmental Defense Fund (EDF) et al. v. EPA, the parties say they held “an initial discussion to evaluate the potential for settlement of some or all” of environmentalists’ claims in late June, followed by “further discussions regarding the potential for settlement” in July and on Aug. 4.

Judge Emmet Sullivan issued an Aug. 9 order directing the parties to submit another status update report by Sept. 3.

The statement, filed in the U.S. District Court for the District of Columbia, suggests a significant change since President Joe Biden’s inauguration.

Last November, the parties filed a joint update report stating -- as such reports had throughout the Trump administration -- that they “do not believe there is a realistic possibility of settling the case.”

The joint statement also opens the door to significant changes in EPA’s new chemicals program, which environmentalists have long charged does not provide adequate transparency.

The suit, first filed in March 2020, charged EPA unlawfully failed to provide adequate information about pre-manufacture notices (PMNs) from companies seeking approval for new chemicals to enter the market as well as other portions of the agency’s Toxic Substances Control Act (TSCA) new chemicals pre-market review program.

Last year, environmentalists amended their complaint to emphasize that Congress revised TSCA in 2016 “to provide the public with knowledge about new chemicals that might enter the market and so that interested persons can provide input into EPA’s decision-making.”

The lawsuit centers on the lack of public availability of documents related to PMNs.

Parties in the case have been negotiating on an administrative record for EPA decisions on chemical risks in determining the ability of plaintiffs to access those documents.

The disagreement over the record stems from differences in how the parties view the case. Environmentalists argue that EPA has affirmatively violated TSCA and should therefore have a record documenting its actions. EPA argues the claims allege a failure to act and therefore it lacks a record.

For most of the case history, parties have held off on hearings or motions filings, seeking to resolve procedural differences so the court can address their substantive claims via summary judgment motions. The latest report indicates they may be able to settle some or all of those claims as well.

The claims come amidst increasing scrutiny over the TSCA program from the Biden administration, which has pledged to review many of the actions taken by the Trump administration in implementing Congress’ 2016 reform of TSCA and the new chemicals program in particular.

'Gatekeeper Role'

Last March, Biden EPA chemicals chief Michal Freedhoff announced the agency is reworking the new chemicals review process, including tightening Trump-era practices on consent orders and stepping up use of data-gathering authority, though she also promised industry that a more stringent policy will not lead to "excessive delays" in approving their applications.

"Starting today, and in the coming weeks and months, EPA will be revising its review efforts for new chemicals to restore the important gatekeeper role that this part of TSCA plays in ensuring the safety of new chemicals before they first enter commerce," Freedhoff said at a regulatory conference March 25, according to prepared remarks the agency provided.

More recently, claims from whistleblowers, including several EPA scientists with or formerly in the TSCA new chemicals program, have sparked further scrutiny of the program in the form of a review from the agency's Inspector...

PEER Urges EPA To Drop Communication Limits On TSCA Scientists

Diana DiGangi, Inside TSCA

<https://insideepa.com/tsca-news/peer-urges-epa-drop-communication-limits-tsca-scientists>

A group representing EPA whistleblowers is urging toxics chief Michal Freedhoff to drop a policy that it says bars some TSCA risk assessors in the new chemicals division from communicating with senior staff, undercutting their evaluations and further exacerbating a long-running backlog of reviews in violation of the law's deadlines.

In an Aug. 10 letter, Tim Whitehouse, executive director of Public Employees for Environmental Responsibility (PEER), urges Freedhoff to intervene to "end the prohibition on intra-agency communication that compromises the scientific integrity of chemical assessments and prevents accurate hazard information from being completely reflected to the ultimate detriment of workers and public safety."

In a statement to Inside TSCA, a spokesperson denied that EPA has such a policy.

"This is not a policy within the Office of Chemical Safety and Pollution Prevention (OCSPP)," the spokesperson says. "This Administration is committed to ensuring that science is the backbone of everything we do as an agency."

The spokesperson added, "That includes a steadfast commitment to fostering a culture that promotes an open exchange and collaboration amongst all employees and includes coordinating with their management chain as appropriate so supervisors are aware of what staff are working on."

However, in his letter to Freedhoff, Whitehouse says that scientists who work in OCSPP are alleging restrictions on communication with senior staff, and those restrictions are worsening problems in the office caused by the 90-day deadlines for new chemicals reviews retained in the reformed Toxic Substances Control Act (TSCA).

"New Chemicals does not have enough staff trained in inhalation toxicology, nanotechnology, cancer biology, animal pathology, epidemiology, developmental and reproductive toxicology, or inorganic chemistry, among other areas," Whitehouse writes. "This problem is exacerbated by the fact that only some employees at the agency are cleared to view Confidential Business Information (CBI), which hinders their ability to consult with experts in other parts of the agency."

Since the enactment of the 2016 reforms to TSCA, EPA has struggled to comply with the new requirement that the agency formally determine within 90 days whether a new chemical poses an unreasonable risk to human health or the environment. While the deadline is not new, the original statute did not require EPA to make such an explicit finding for every new chemical submitted.

The requirement led to a backlog of hundreds of pending pre-manufacture notices (PMNs) in the early days of the Trump administration, but also prompted a policy battle with environmentalists as officials took steps to ease the delays.

But the program is again facing disputes as Freedhoff has indicated she plans to strengthen the program, through more aggressive use of enforcement orders in response to industry PMNs and stronger consideration of workplace hazards.

Environmentalists have viewed her announcement as a first step (/node/229765) in strengthening the program though industry fears it will lead to further delays.

OCSPP Reorganization

In his letter to Freedhoff, PEER's Whitehouse writes that OCSPP's recent reorganization removed "a number of experienced senior scientists" from the new chemicals program, causing additional stress to the program and its ability to meet TSCA deadlines and eroding environmental protections, while "seasoned employees who felt more comfortable defending human health protective hazard calls to management were replaced with new staff who were not adequately trained to independently conduct human health hazard assessments."

"Unfortunately, management continued these prohibitions on the New Chemicals staff after the reorganization, explicitly stating management expectations were that they could not communicate with other Office of Pollution Prevention and Toxics (OPPT) divisions," Whitehouse says.

"Significantly, this prohibition is no...

EPA expands Safer Chemicals list

N/A, Inside TSCA

<https://insideepa.com/tsca-takes/epa-expands-safer-chemicals-list>

EPA's green chemistry program has added 36 chemicals to its Safer Chemical Ingredients List (SCIL), which includes chemicals thought to be less toxic than other substances in their class, a new expansion in a program that the Trump EPA sought repeatedly to eliminate in its budget proposals to Congress.

"In support of the Biden-Harris Administration's goals, the addition of chemicals to the SCIL enables further innovation in safer chemistry, which can promote environmental justice, bolster resilience to the impacts of climate change, and improve water quality," EPA's Aug. 10 statement says. "EPA is committed to updating the SCIL with safer chemicals on a regular basis."

EPA does not identify the chemicals it has added to the list in the statement.

EPA's Safer Choice program, which manages the SCIL list, was an early target for Trump EPA chemicals officials in their efforts to move additional staff towards addressing the backlog of new chemicals applications in the agency's Toxic Substances Control Act (TSCA) new chemicals review program following Congress' 2016 rewrite of the statute. The agency detailed several Safer Choice staff to work on the new chemicals program beginning in early 2018.

The Safer Choice program is voluntary. It evaluates chemicals for inclusion on the SCIL, chemicals considered best in their class from toxicity perspectives. The program also evaluates individual products, generally cleaning products. Those that meet the program's specifications are entitled to include EPA's Safer Choice logo on their labels, as a marketing effort.

The agency relied on the SCIL as the source for determining 20 chemicals to be low priority for evaluation in the TSCA

program's existing chemicals evaluation program. Congress in its 2016 rewrite of TSCA directed the agency to find and designate at least 20 chemicals as low priority for evaluation, an evidentiary bar in some ways higher than prioritizing chemicals for evaluation.

EPA's statement also nods to the Biden administration's environmental justice focus, stating that "In the coming year, EPA hopes to expand the Safer Choice program to make products containing safer chemicals increasingly available to underserved communities, including communities of color and low-income communities."

Former Contractor Charged with Violating Federal Lead Paint Laws

N/A, US DOJ

<https://www.justice.gov/usao-sdin/pr/former-contractor-charged-violating-federal-lead-paint-laws>

A federal grand jury in Indianapolis returned an indictment yesterday charging a Richmond, Indiana man with violating the Toxic Substance Control Act, specifically the provisions of the Act concerning lead paint, and obstruction of justice.

According to court documents, Jeffrey Delucio, 52, of Richmond, was a co-operator of Aluminum Brothers Home Improvements LLC in Richmond. Delucio failed to follow lead-safe work practices while renovating residences in the Richmond area. As a result, lead-based paint chips were scattered throughout the properties and were not cleaned up timely or properly as work was being conducted. One of the residences was inhabited by a child with elevated blood lead levels, which had prompted the renovation work at that property to begin with.

The indictment also alleges that Delucio failed to train his workers on lead-safe work practices and then falsified documents to conceal his conduct. Delucio's company received a federal grand jury subpoena for records, including records of employee training on lead-safe work practices. The indictment alleges that Delucio had not trained his employees but, in response to the subpoena, fabricated records purporting to state that he did.

"The health and safety of all Hoosiers is a responsibility that everyone plays a role in," said Acting U.S. Attorney John Childress. "Mr. Delucio failed the community, his employees, and the environment. This is another example of bringing those who violate that responsibility to justice to help protect our citizens and preserve the environment for current and future generations."

"The defendant created risks by not only failing to follow lead-safe work practices, but also falsely representing to the government that employees had received training," said Special Agent in Charge Jennifer Lynn of EPA's criminal investigation program. "Today's indictment demonstrates that individuals that intentionally violate environmental laws will be held responsible for their crimes."

"This indictment represents our continuing resolve to investigate instances of fraud, particularly when the programs involved protect children and families from lead and other hazardous materials," said HUD OIG Special Agent in Charge Michael Powell. "It is our continuing core mission to work with our law enforcement partners and the United States Attorney's Office to protect the integrity of our programs and to take strong action against those who seek to circumvent the laws meant to protect the most vulnerable in our communities."

"I want to thank the U.S. EPA, HUD, and DOJ for their collaboration in protecting the health and well-being of Hoosiers," said IDEM Commissioner Bruno Pigott. "Strong partnerships with our federal partners are vital to keeping our environment safe for children, vulnerable communities, and everyone throughout Indiana."

Delucio has been charged with two counts of violating the Toxic Substances Control Act, as well as one count of falsifying documents during a federal investigation. If convicted, he faces up to 20 years in prison. A federal district court judge will determine any sentence after considering the U.S. Sentencing Guidelines and other statutory factors.

The case was jointly investigated by the United States Environmental Protection Agency, the United States Department

of Housing and Urban Development, and the Indiana Department of Environmental Management.

Assistant United States Attorney Kate Olivier is prosecuting the case.

Cargill settles with EPA for alleged chemical reporting violations at Vermont plant

N/A, Vermont Business Magazine

<https://vermontbiz.com/news/2021/august/11/cargill-settles-epa-alleged-chemical-reporting-violations-vermont-plant>

The U.S. Environmental Protection Agency (EPA) recently finalized a settlement with Cargill, Inc., a Minnesota based company with a facility in Vermont that produces animal feed, for alleged violations of the Emergency Planning and Community Right-to-Know Act (EPCRA)'s Toxic Release Inventory (TRI) Program.

Cargill, Inc. agreed to pay a penalty of \$40,294 for allegedly failing to timely file TRI reports for zinc and manganese compounds processed at its plant in Swanton, Vermont.

"To inform the public and protect communities, EPA requires companies and organizations that manufacture, process, or otherwise use certain chemicals to report this information publicly every year. This reporting is an important part of ensuring that local communities have access to information about the presence of chemicals in their area," said EPA New England Acting Regional Administrator Deborah Szaro.

Under federal TRI regulations, companies that use certain listed chemicals must report their chemical usage each year to EPA. This information serves as the basis for the Toxic Release Inventory, which is a collection of data that can be reviewed by communities, government, and industry. Because the information is available to the public, companies have an incentive to reduce harmful chemical use and improve their environmental performance. TRI reporting informs surrounding communities about a facility's toxic chemicals that could potentially harm public health and the environment.

Illinois enacts ban on PFAS-containing firefighting foams

Julia John, Chemical Watch

<https://chemicalwatch.com/314501/illinois-enacts-ban-on-pfas-containing-firefighting-foams>

Illinois has become the latest US state to regulate class B firefighting foams containing per- and polyfluoroalkyl substances (PFASs).

Governor JB Pritzker signed SB 561 into law on 6 August, prohibiting the production, sale or distribution of foams with PFASs. It comes into effect on 1 January 2025. Before that date, certain industrial entities can get a two-year compliance extension if they contact the Office of the State Fire Marshal.

The legislation, which unanimously cleared the legislature, also bans PFAS-containing foams in training and testing from 1 January 2022. However, testing involving the substances can occur if the user has:

assessed the testing site for control, treatment and disposal options to avoid unrestrained environmental discharges; fulfilled notification requirements; and

trained workers on potential hazards, protective measures and foam removal.

The restrictions do not affect emergency fire department activities or instances where local building or fire codes permit PFASs.

Effective at the same time, the law directs producers to give pre-purchase notifications to fire departments, communicating that "the product contains PFASs that may be hazardous to health or the environment; the use of the

product is regulated and restricted under this act; and other class B firefighting foam options may be available for purchase".

Meanwhile, beginning on 5 September 2021, makers of foams including the compounds must notify Illinois-based sellers about the statute's provisions.

From 1 January 2022 onwards, the release of these materials' must be reported to the Illinois Emergency Management Agency within 48 hours. The report must specify:

the reason for the release;

the time, the date, location and quantity put into the environment; and

the containment, treatment and disposal actions necessary to minimise contamination.

Manufacturers breaking this law face maximum penalties of \$5,000 for the initial violation and \$10,000 for each additional one. The money will go toward the state's Environmental Protection Trust Fund.

The measure outlaws dumping PFAS-containing foams into ditches, waterways, storm drains or sanitary sewers, and requires disposal within 90 days of their expiration date.

The Illinois Fire Chiefs Association (IFCA) called the policy "a good compromise that will help protect our firefighters while beginning the process of moving away from foam containing PFASs", yet still "allowing our fire departments to use the tools they have to fight flammable liquid emergencies".

Donovan Griffith, director of government affairs at the Illinois Manufacturers' Association (IMA), added that "SB 561 will continue to allow Illinois to have state-of-the-art protection systems".

State Senator Laura Ellman (D), the legislation's sponsor, said it illustrates Illinois' first step to decrease PFAS use. "Our bill's scope does not cover every way that PFASs enter our water systems, so further efforts will likely lead to more initiatives," she told Chemical Watch. "A data-driven approach to risk, costs and impacts will be needed to identify the next steps."

US states are increasingly adopting policies to address these compounds in firefighting foams. They include Arkansas, California, Colorado, Louisiana, Michigan, Minnesota, Nevada, New Hampshire, Vermont, West Virginia and Wisconsin.

FDA Alert Spurs Call to Check Containers for 'Forever Chemicals'

Pat Rizzuto, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/fda-alert-spurs-call-to-check-containers-for-forever-chemicals?context=search&index=23>

A public letter that the Food and Drug Administration recently directed to packaging companies isn't enough to stop "forever chemicals" from getting into food, environmental groups say.

An FDA compliance alert reminded companies about a 1983 rule requiring food be stored only in fluorinated plastic containers manufactured in authorized ways. Companies fluorinate containers to preserve the contents.

Placing food in plastic containers made in unauthorized ways would violate the FDA's requirements and may unintentionally cause certain per- and polyfluoroalkyl substances, or PFAS, to get into the food supply, the agency said. It referred to Environmental Protection Agency research and urged companies to contact it if they have questions.

The letter is a good first step, but the FDA needs to investigate packaging and other companies to understand the scope of this possible problem, said Tom Neltner, an attorney who directs chemicals policy at the Environmental Defense Fund.

The agency also should reconsider whether the fluorination process it authorized decades ago sufficiently protects people, he said and blogged.

Lack of Clarity?

Subsequent scientific research has raised concerns about much lower levels of PFAS than the FDA flagged as a possible concern back in the 1980s, Neltner said. He referred to FDA comments included in a package of materials the defense fund recently received from the agency following a Freedom of Information Act request.

Plastic container manufacturers also may need more guidance to comply with the 1983 rule and FDA's recent letter, Neltner said. The rule allows fluorine and nitrogen gases to be used to make the plastic stronger, but the FDA's letter said neither oxygen nor water are allowed because they can help create PFAS.

Yet food-grade nitrogen gas is allowed to have oxygen and can have moisture in it, Neltner said. Neither the rule nor letter are clear about the purity of the nitrogen or fluorine that can be used, he said.

The Environmental Working Group blasted FDA for allowing any amount of PFAS in food, issuing a statement calling on a ban of all PFAS from food packaging.

PFAS are often dubbed "forever chemicals," because some can last for decades—or longer—after getting into people or the environment. The PFAS of concern also are associated with health problems including higher cholesterol and increased risk of cancer.

Industry presses US EPA to scale back PFAS reporting rule

Kelly Franklin, Chemical Watch

<https://chemicalwatch.com/315048/industry-presses-us-epa-to-scale-back-pfas-reporting-rule>

Chemical manufacturers and trade groups say the US EPA has "drastically underestimated" the compliance costs of its proposed PFAS reporting rule and have asked the agency to make significant changes to reduce the "extraordinarily burdensome" data collection effort.

The industry comments illustrate the compliance challenges that could lie ahead for companies throughout the supply chain if the EPA does not deviate from its current path. But they also tee up a clash with environmental advocates that are eager for the agency to gather all available data on the persistent class of substances.

In June, the agency proposed a TSCA section 8(a) reporting rule covering all per- and polyfluoroalkyl substances (PFASs) imported or produced since 1 January 2011, as required by language in the 2020 National Defense Authorization Act (NDAA).

But with more than a month to go before comments are due on a proposal that would cover more than 1,300 PFASs, several industry bodies have said the EPA needs to narrow the focus of the rule, provide more time for responses and update its burden estimates to better reflect compliance costs (see box).

'Thousands' subject to reporting

Groups like the American Chemistry Council (ACC) and the US Chamber of Commerce and individual manufacturers like Solvay and 3M have raised concerns over the proposed rule's lack of exemptions typical in other TSCA reporting mandates, such as for article importers, small businesses, or de minimis volumes.

"If EPA intends to require reporting by manufacturers and importers of articles that contain PFASs, the number of entities that would be subject to this reporting rule will increase by thousands," said the ACC.

"Very similar issues" were at play in the 2018 TSCA fees rule, the US Chamber of Commerce said. Ultimately the EPA "adopted a series of exemptions after issuing a rule without exemptions, just like the EPA proposal at issue here", it said.

The business group asked the EPA to modify its rule to:

- eliminate the reporting requirement for PFAS use in articles;
- develop exemptions (eg for impurities, byproducts, quantities under 2,500lbs and R&D);
- exclude small businesses;
- incorporate "appropriate exclusions" for certain PFAS, such as by focusing "solely on substances for which EPA already has a documented basis for concern based on available toxicity and exposure data";
- avoid requiring the regulated community to report duplicative information;
- provide more time for reporting; and
- "substantially increase" estimated industry compliance costs.

Agency discretion?

The language of the NDAA limits the EPA's ability to make certain changes. For example, it says a final rule must be issued by 1 January 2023, and reporting must cover "each person who has manufactured a chemical substance that is a perfluoroalkyl or polyfluoroalkyl substance in any year since 1 January 2011."

But some industry attorneys think the agency has room to maneuver on other issues.

The "EPA should exercise its scientific discretion and offer exemptions that in its view are justified and ... do not undermine EPA's ability to elicit useful data," said Lynn Bergeson, managing partner at Bergeson & Campbell.

Moreover, there is a provision in section 8 of TSCA that directs the agency, to the extent feasible, not to require reporting that is "unnecessary or duplicative".

Warren Lehrenbaum, a partner with Crowell & Moring, said, "not only does EPA have the authority to tailor the reporting requirement, but arguably it has an obligation under this section to avoid unnecessary or duplicative reporting."

But scaling back reporting requirements would surely be met with resistance from groups already pressing the agency to expand, rather than contract, its PFAS data collection.

The Environmental Protection Network, for example, has already asked the agency to include in the rule all facilities processing PFASs since 2011, in addition to manufacturers, importers and article importers. That would allow...

\$86M to California couple upheld in Monsanto pesticide case

N/A, AP

<https://apnews.com/article/business-health-california-bf09d3a772ad28048feab65fc9f7b299>

A state appeals court upheld \$86.2 million in damages to a Northern California couple who developed cancer after spraying Monsanto's Roundup, the world's most widely used herbicide, in their yards for 30 years.

The verdict in favor of Alva and Alberta Pilliod that found Monsanto at fault for knowingly marketing a dangerous product was the third to be upheld by an appeals court, the San Francisco Chronicle reported Monday.

In a 2-1 ruling, the First District Court of Appeal in San Francisco said that despite federal regulators' approval of Roundup, jurors were entitled to conclude that Monsanto knew the herbicide's active ingredient, glyphosate, could be dangerous and failed to warn the couple from Livermore.

"The evidence shows Monsanto's intransigent unwillingness to inform the public about the carcinogenic dangers of a

product it made abundantly available at hardware stores and garden shops across the country,” Justice Marla Miller said in the majority opinion.

Dissenting Justice James Richman did not dispute Monsanto’s responsibility for the Pilliods’ illnesses but said the evidence did not show the company knew of the dangers.

The ruling comes less than two weeks after Monsanto’s parent company, Bayer, announced that it would stop selling the current version of Roundup for home and garden use in U.S. stores, starting in 2023.

Bayer said it would replace the herbicide’s main ingredient, glyphosate, with an unspecified active ingredient, subject to federal and state approval, while continuing to sell Roundup with glyphosate for farm use.

The International Agency for Research on Cancer, an arm of the World Health Organization, classified glyphosate as a probable cause of human cancer in 2015. The U.S. Environmental Protection Agency and most regulatory bodies in Europe say it can be used safely.

The appeals court said there was evidence, which the jury was entitled to believe, that Monsanto had failed to conduct proper studies for the EPA on the safety of the herbicide and that the company’s scientists had “ghost-written” reports in the names of purportedly independent researchers.

In a statement Monday, Bayer said it disagreed with the ruling and was reviewing its options.

“We continue to stand strongly behind the safety of Roundup, a position supported by four decades of extensive science and the assessments of leading health regulators worldwide that support its safe use,” the company said.

Bayer has agreed to pay \$10 billion to settle thousands of lawsuits that have already been filed in state and federal courts.

Neonicotinoids Harm Bees at Far Below the Label Recommended Dose, Study Finds

Olivia Rosane, EcoWatch

<https://www.ecowatch.com/neonicotinoids-harm-bees-2654615209.html>

Ornamental plant nurseries — with their high concentration of different flowers — are an important food source for pollinators. In fact, University of California (UC), Riverside entomologists Jacob Cevala and Erin E. Wilson Rankin counted more than 150 species of wild bees at nurseries in California alone.

Despite this, very little research has been done on how the pesticides often used at plant nurseries impact these crucial insects.

So Cevala and Rankin conducted an experiment to see how the use of a common neonicotinoid on ornamental plants would impact the solitary alfalfa leafcutter bee (*Megachile rotundata*). The answer? Quite a lot.

When the pesticide was applied at just 30 percent of the recommended dose, it still reduced the bees' reproduction by 90 percent.

"This result reminds us that while ornamental plants serve as critical resources for solitary bees, we must be vigilant about how we manage these plants and the chemicals we apply to them," Cevala told EcoWatch in an email.

Pesticide Management

The research, published in Proceedings of the Royal Society B last month, was designed to determine how different

nursery pesticide management practices might help or harm bees. In particular, Cecala and Rankin wanted to know if the amount of water the plants received would make a difference.

"Overall, we don't know a lot about how plant management practices in agriculture, particularly horticulture, affect solitary bee reproduction," Cecala said. "To fully understand the impacts of neonicotinoids on pollinators, one should also know whether the plants themselves are affected by these chemicals."

Because neonicotinoids are water soluble, Cecala thought that watering the plants more would lessen the pesticides' impact on bees, according to a UC Riverside press release. To test this, he and Rankin introduced bees to ornamental plants that had been treated with 30 percent of the label dose of a common neonicotinoid and plants that had not. Within each category, some of the plants were watered more, and some less. The particular pesticide they used was imidacloprid, a neonicotinoid sold as Marathon®. This is a pesticide designed for use in nurseries and greenhouses that has been on the market since 1994.

What they found was a surprise, Cecala told UC Riverside. The pesticide-treated plants that had been watered more did have less imidacloprid in their nectar, but they were equally harmful to bee foraging and reproduction as the pesticide-treated plants that had been watered less.

While the study was conducted in the controlled environment of the lab, Cecala said it was likely that nursery pesticides are harming bees outside the lab as well.

"[W]e observed highly detrimental impacts on solitary bees' reproduction when applying only 30% the recommended dose of the insecticide – an applicator would likely follow the label's recommended dose," he said. "If applied to a bee-attractive plant that is currently flowering or soon to flower, there is reason to believe we would see similar negative impacts on these 'real world' bees."

A Second Silent Spring

The results of the study were not surprising for Daniel Raichel, who is the acting director of the Natural Resources Defense Council (NRDC)'s pollinator initiative. Instead, they add to a growing body of evidence pointing out that neonicotinoids are extremely harmful, both for bees and other animals.

These pesticides are a problem for two main reasons, according to Raichel. First, they are "phenomenally toxic," he told EcoWatch. One study found that agriculture had become 48 times more toxic to insects in the U.S. between 1992 and 2014, largely because of neonicotinoid use.

"One neonic-treated corn seed can have enough active ingredient to kill a quarter million bees or more and one square foot of neonic-treated lawn, at the EPA approved label rate, can have enough active ingredient to kill a million bees," he said.

Another problem is that neonicotinoids are designed...

Pesticide Smuggler Sentenced to Jail, Ordered to Pay \$10,000

N/A, US DOJ

<https://www.justice.gov/usao-sdca/pr/pesticide-smuggler-sentenced-jail-ordered-pay-10000>

Mark Lee Morgan of Santa Ana, California, was sentenced in federal court Friday to 14 days in custody and ordered to pay a fine of \$10,000 plus restitution of \$1,360 for the cost of disposal of the pesticides, and to perform 120 hours of community service.

In pleading guilty, Morgan admitted that on November 19, 2020, he entered the United States from Mexico with 34

bottles of undeclared Mexican pesticides in his truck (DDVP 500U, containing the active ingredient of dichlorvos). Morgan owns a feed store in Compton, California, and admitted to agents that he intended to take the products to his store to sell them. Morgan further admitted that he was aware that the pesticide he was smuggling was illegal to import and use in the United States, and that he had smuggled it in on previous occasions.

The pesticide in the formulation smuggled by the defendant is illegal in the United States. Dichlorvos is lethal if ingested, absorbed through the skin, or inhaled. It is highly toxic to bees and birds, acutely toxic to fish and aquatic invertebrates, and can have chronic and long-lasting effects.

According to sentencing documents, DDVP 500U, the chemical smuggled by the defendant, is commonly found at locations where marijuana is illegally cultivated. Exposure to these pesticides during eradication efforts has caused law enforcement officers to be hospitalized and has polluted soils and streams and killed wildlife. Cannabis users are also at risk. In one study, the pesticide transfer rate into the blood stream of a cannabis smoker using a glass pipe was as high as 70 percent.

“The defendant was willing to risk the health of others and the environment for his own commercial profit,” said Acting U.S. Attorney Randy Grossman. “The U.S. Attorney’s Office is committed to keeping these dangerous chemicals out of the wrong hands.”

“These pesticides seized at our border are highly toxic and anyone attempting to smuggle them into the United States is not only committing a very serious crime, but also jeopardizing the health of those who are exposed to it,” said Cardell T. Morant, Special Agent in Charge of U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) San Diego. “HSI and our law enforcement partners will continue to work together to prevent smugglers from illegally importing dangerous substances into this country.”

“The defendant’s efforts to deceive law enforcement by smuggling these pesticides into the United States put people at risk” said Scot Adair, Special Agent in Charge of the EPA’s criminal enforcement program in California. “U.S. EPA and its partner agencies will continue to fight against illegal imports of pesticides that pose a threat to human health and the environment.”

EPA Adds 36 Chemicals to the Safer Chemical Ingredients List

Lynn Bergeson, Bergeson & Campbell Blogs

<http://www.tscablog.com/entry/epa-adds-36-chemicals-to-the-safer-chemical-ingredients-list>

The U.S. Environmental Protection Agency (EPA) announced on August 10, 2021, that it added 36 chemicals to the Safer Chemical Ingredients List (SCIL). EPA states that the SCIL “is a living list of chemicals, by functional-use class, that EPA’s Safer Choice program has evaluated and determined meet Safer Choice criteria.” Listed chemicals “are among the safest for their functional use.” According to EPA, the SCIL is a “critical resource” that can be used by many different stakeholders, including:

Product manufacturers that use the SCIL to help them make high-functioning products that contain safer ingredients;
Chemical manufacturers that use the SCIL to promote the safer chemicals they manufacture;
Retailers that use the SCIL to help shape their sustainability programs; and
Environmental and health advocates that use the SCIL to support their work with industry to encourage the use of the safest possible chemistry.

EPA’s Safer Choice program certifies products containing ingredients that have met the program’s human health and environmental safety criteria. Companies can use the Safer Choice label on products that meet the Safer Choice Standard. EPA’s website contains a complete list of Safer Choice-certified products. EPA states that in the coming year, it hopes to expand the Safer Choice program “to make products containing safer chemicals increasingly available to underserved communities, including communities of color and low-income communities.”

Of Multiple Stressors, Pesticides Are the Most Harmful to Bees by Acting Synergistically to Increase Mortality

N/A, Beyond Pesticides

<https://beyondpesticides.org/dailynewsblog/2021/08/of-multiple-stressors-pesticides-are-the-most-harmful-to-bees-by-acting-synergistically-to-increase-mortality/>

Multiple stressors, including pesticides, parasites, and poor nutrition, act synergistically to increase the risk of bee mortality, according to a meta-analysis recently published in the journal *Nature*. The findings are yet another indictment of the U.S. pesticide regulatory system's ability to protect pollinators, as the authors note that their results, "...demonstrate that the regulatory process in its current form does not protect bees from the unwanted consequences of complex agrochemical exposure." As scientific community continues to confirm the dangers of pesticides and other anthropogenic stressors to pollinators, it remains up to advocates and other concerned residents to get regulators and policymakers to listen to and act on these critically important conclusions.

Scientists aimed to evaluate how combinations of multiple pesticides, parasites, and lack of floral resulted in bee death or subchronic effects that impacted overall fitness (reproductive ability, colony health, etc), behavior, parasite load, or immune response. The effects of multiple stressors can be characterized as antagonistic when stressors cancel themselves out, additive when the impacts seen are what would be predicted when summing the individual effects, and synergistic when the effects are multiple times more harmful than what would be predicted additively. To conduct the analysis, researchers began with nearly 15,000 papers on bee health, and narrowed down their review to 90 studies that observed over 350 interactions between multiple stressors.

At the most general level, multiple stressors were synergistic in the context of bee mortality, but additive for effects on overall fitness. Looking further into the data, it was determined that exposure to multiple pesticides had the most robust connection to synergistic impacts. Researchers suspected that studies exposing pollinators above field-realistic doses may have contributed to that result, but a reanalysis that focused solely on pesticide levels pollinators would encounter in the wild found the same results. "Interactions between multiple agrochemicals significantly increase bee mortality," said lead author Harry Siviter, PhD.

Most other stressors exhibited additive impacts on bee mortality and health. Interactions between nutritional health, parasite load, and pesticide exposure were summed predictably for bee mortality. Differences, however, were seen for the overall combined effects of multiple stressors on parasite load. These effects are characterized as antagonistic. Scientists suspect that the cause is likely because two parasites will attempt to outcompete each other, but note that this could vary by parasite type and may be due to variability in the study dataset.

"Our results show that although many classes of anthropogenic stressors may have additive effects on bee mortality and fitness proxies, exposure to combined agrochemicals can have synergistic effects that are more detrimental than would be predicted by independent risk assessments," the study reads.

The U.S. Environmental Protection Agency has access to the same studies analyzed as part of this meta-analysis. Yet, the agency continues to register bee-toxic pesticides and permit them to be used in combination with other active and inert pesticide ingredients. Unfortunately, a large part of the problem is that the data EPA relies upon is not the data these scientists are analyzing in the open literature – instead, EPA primarily uses data supplied by the pesticide industry to determine risk. In just one example of EPA's lack of adequate oversight and transparency, in 2019, the agency reregistered the bee-toxic insecticide sulfoxaflo (a pesticide beekeepers had, just a few years earlier, successfully banned in the courts). As part of its new registration, EPA relied on studies from pesticide manufacturers and decided to waive prior restrictions on 'tank mixing' the insecticide with other toxic pesticides. This was done...

Companies that Manufacture or Distribute Pesticides or Foods in Polyethylene Containers Should Track FDA, EPA, and USDA Activities on PFAS

Nancy Beck, Matthew Leopold, Gregory Wall, The National Law Review

<https://www.natlawreview.com/article/companies-manufacture-or-distribute-pesticides-or-foods-polyethylene-containers>

In January, EPA obtained data that some mosquito control pesticides contained detectable levels of certain PFAS. In a joint investigation with the State of Massachusetts, EPA found that fluorinated high-density polyethylene (HDPE) containers containing a mosquito control pesticide were leaching PFAS into the product. Now, EPA is testing different brands of fluorinated containers to determine whether they contain and/or leach PFAS and has asked the states with existing stocks of these pesticides to discontinue use as EPA evaluates the issue. Information on the EPA activities can be found [here](#). EPA also began working with USDA and FDA to get a better understanding of the use of fluorinated polyethylene containers for pesticides and other products.

Likely prompted by the coordination with EPA, on August 5th, FDA issued a letter to manufacturers, distributors, and users of fluorinated polyethylene food contact articles. The FDA letter can be found [here](#). FDA is reminding these users that there is an FDA regulation governing the production of these containers. The regulation stipulates that fluorinated polyethylene containers for food contact use may only be manufactured by modifying the surface of the molded container using fluorine gas in combination with gaseous nitrogen as an inert diluent. The regulation does not authorize fluorination in the presence of water, oxygen, or gases other than nitrogen.

Considering the strong congressional interest in understanding and mitigating PFAS exposures, companies should continue to expect EPA, USDA, and FDA to look across the entire value chain for PFAS substances. For instance, at EPA, Administrator Regan asked his PFAS Advisory Council (the EPA Council on PFAS) to provide him with initial recommendations to update a multi-year PFAS strategy. Those recommendations were due on August 5th and are currently being reviewed.

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